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# PERISHABLE AGRICULTURAL COMMODITIES ACT

## FAIR TRADING IN THE FRUIT AND VEGETABLE INDUSTRY



U.S. DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
FRUIT AND VEGETABLE DIVISION  
PROGRAM AID NO. 804



## THE PERISHABLE AGRICULTURAL COMMODITIES ACT

FAIR TRADING  
IN THE FRUIT  
AND VEGETABLE  
INDUSTRY

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Fruits and vegetables—being highly perishable—need to be harvested, packed, and distributed quickly. People in the fast-moving, financially hazardous produce business must rely on the honesty and good faith of those with whom they trade.

Encouraging fair trading practices in this business is the purpose of the Perishable Agricultural Commodities Act—PACA. This Federal law prohibits unfair and fraudulent practices in the marketing of fresh and frozen fruits and vegetables and sets penalties for violation. It provides for collecting damages from anyone who fails to live up to his contract obligations.

The produce industry realized the need for a code of fair trading standards many years ago. At the industry's request, PACA was passed by Congress in 1930. Since then, it has been amended a number of times to keep it in step with changing trade practices. PACA is administered by the Agricultural Marketing Service of the U.S. Department of Agriculture, through its Fruit and Vegetable Division.

### **Licenses—key to PACA enforcement**

PACA requires commission merchants, dealers, and brokers handling fresh and frozen fruits and vegetables in interstate or foreign commerce to be licensed.

Under PACA, dealers include shippers, wholesalers, certain retailers, truckers, and, in some instances, processors, who buy or sell these commodities in wholesale or jobbing quantities (totaling 1 ton or more during any day).

A retailer is subject to licensing when the invoice cost of all his purchases of fresh and frozen fruits and vegetables during a calendar year exceeds \$100,000. In computing this dollar volume, all purchases are to be counted regardless of the size of the lot involved or whether the transaction was in interstate, intrastate, or foreign commerce.

A frozen food broker who acts as independent agent negotiating sales for the vendor and whose only sales of perishable commodities consist of frozen fruits and vegetables needs a license when the invoice cost of these sales is more than \$100,000 in a calendar year.

All other brokers dealing in products covered by PACA must have a license to engage in business.

Growers who sell their own fruits and vegetables don't need a license, but they do if they also sell in interstate or foreign commerce produce that is grown by other farmers.

Truckers don't need a license if they merely haul produce for freight charges, but they do if they buy and sell fruits and vegetables in interstate or foreign commerce.

License fees, collected each year, are used to pay the expenses of administering PACA, except for the cost of legal services.

The penalty for operating without a required license is up to \$500 for each offense and up to \$25 for each day the offense continues. Other violations of PACA can result in suspension or revocation of a license.

Inquiries on licensing or requests for license applications should be directed to one of the PACA offices listed on the last page.

## **Doing business the PACA way**

PACA requires traders to comply with terms of their contracts. Sellers must ship the quantity and quality of produce specified. Buyers must accept shipments that meet contract and pay promptly after acceptance. Prompt payment means within 10 days unless there is a *prior* agreement to extend the time that payment is due. For consigned shipments, receivers must issue accurate accountings and pay net proceeds promptly.

Regulations under PACA include definitions of standard trade terms that are specifically designed to assist in buying and selling of fruits and vegetables. Shippers and dealers should become familiar with these terms and use them properly. In this way, they can draw up brief, accurate, written contracts which will reduce misunderstandings.

Copies of PACA and its regulations, in pamphlet form, may be obtained free on request.

## **Unfair practices**

Some of the trade practices defined as unfair by PACA are:

- Failure of a seller, without reasonable cause, to deliver produce sold or contracted to be sold.
- Rejection, without reasonable cause, of produce bought or contracted to be handled on consignment.
- Failure to pay promptly the agreed price of produce which complies with contract terms.
- Discarding, dumping, or destroying any produce received by commission merchants on consignment, without reasonable cause.
- Failure or refusal to account truly and correctly and to make full payment promptly for produce shipped on consignment or on joint account.
- Misbranding—misrepresentations of grade, quality, quantity, weight, or State of origin of fruits and vegetables in interstate or foreign commerce are prohibited. PACA doesn't require any particular markings on containers, but those that are used must be accurate. Anyone shipping misbranded produce may find that the buyer is entitled to reject it or to correct the misbranding at the shipper's expense. A licensee who violates the law by misbranding is subject to USDA disciplinary action, which can result in suspension or loss of his license. A recent change in the law permits, in lieu of disciplinary action, fines up to a maximum of \$2,000 for each misbranding violation.

## **Records**

PACA requires every licensee to prepare and maintain records which fully and correctly dis-



close all transactions involving his business. The regulations specify the basic records that are to be kept, depending on the nature of the business. For example, these specific records must be kept in addition to general records:

- Growers' agents must prepare a written contract or statement clearly defining the duties and responsibilities of both parties to the agreement and the extent of the agent's authority in distributing the produce. Copies must be delivered to all parties involved.

- Shippers must prepare and maintain records covering the receipt and disposition of all produce handled.

- Brokers must prepare in writing and deliver promptly to all parties involved a confirmation or memorandum of sale which accurately states all the essential details of their contracts.

- Market receivers and commission merchants must maintain a record showing all the required information on each shipment received. They must use lot numbers to segregate and identify different lots of produce which are being handled on consignment or joint account.

A good basic system of records is essential to sound management of any business. Properly prepared contracts and good records minimize disputes. In a dispute, these records can help you prove your claim.

## **Informal complaints**

Complaints that PACA has been violated may be filed with USDA. Anyone with a financial interest in a transaction can file a complaint whether he holds a PACA license or not. To do this, just address a letter to the nearest of the five PACA offices listed on the last page of this leaflet. Give the names and addresses of the persons involved, nature of the contract, commodity involved, and an explanation of the cause of the dispute. State the amount of damages claimed and show how it's computed.

Enclose the originals or copies of all papers relating to the transaction. If the matter needs urgent attention—like a rejection of a shipment at a terminal market—you can wire the details or

telephone one of these offices and send the supporting evidence later.

Your papers will be reviewed by one of the PACA investigators. If there is a proper basis for a complaint, he will contact the other party and try to arrange an informal settlement. Most of the complaints filed under PACA are settled informally, with a big saving in time, effort, and expense to the people involved. USDA makes no charge for handling complaints.

Complaints must be filed within 9 months after the alleged violation. However, the sooner complaints are filed, the easier it is to arrange an informal settlement. When complaints are filed long after the transaction occurred, it's often difficult or impossible to locate all parties to the dispute and to assemble all the needed evidence.

## **Formal complaints**

If an informal settlement can't be arranged, the person claiming injury may be given opportunity to file a formal complaint. When the amount involved is more than \$3,000, either person can request an oral hearing to present evidence. These hearings are handled somewhat like court proceedings and the winning party is entitled to reasonable attorney's fees and expenses. Cases involving smaller amounts are handled without an oral hearing, with the persons submitting their evidence in writing.

When the proceedings end, USDA decides the case. The person charged with the violation may be ordered to pay a reparation award. If he doesn't pay the award, his license is suspended automatically, and he may not continue in business nor be employed by another PACA licensee. His only alternative to this is to file an appeal in a U.S. District Court within 30 days from the date of the order.

If a reparation award is not paid, the person who submitted the complaint may file suit in court to gain a judgment on the award.

## **How to avoid disputes**

You can minimize disputes in two simple ways:

*First*, check the financial status and reputation of anyone you plan to do business with. Many



claims filed under PACA involve failure to pay promptly for produce. Bear in mind that a PACA license is not a guarantee of any firm's financial status or dependability. Except under certain conditions, surety bonds are not required of PACA licensees. Remember, too, that USDA can take action only against a person who is licensed or subject to license under the Act.

*Second*, when you agree on contract terms, get them down in writing. It need not be an elaborate document—just a brief, accurate memorandum sent promptly to the other party to confirm the deal. That way, misunderstandings of prices or terms of the sale can be ironed out quickly. Unless all the terms of the contract are fully stated in writing, you may not have the evidence you need to prove your claim in a dispute.

### **Ask your PACA representative**

When you have a problem in buying or selling fruits and vegetables under this law, get in touch with your nearest PACA office. PACA representatives are experts in the business of marketing produce and are available to counsel—at no cost—growers, shippers, and dealers who want advice on how to handle marketing problems.

Your PACA representatives will advise you informally of your rights and responsibilities under the law and will tell you how you can use the services of USDA.

### **Other publications available**

*Plain Talk About PACA* (PA-1096). Fundamentals of law in layman's language.

*The Fruit and Vegetable Grower and PACA* (PA-1021). Grower's rights and responsibilities under PACA.

*El Cultivador De Frutas Y Hortalizas Y El Decreto PACA* (PA-1021-S). Spanish-language edition of above publication.

*What Food Retailers Should Know About the Perishable Agricultural Commodities Act* (PA-794). How and why PACA relates to retailers' activities.

*Perishable Agricultural Commodities Act, 1930, and Regulations*. Text of the Act and the regulations.

*Rules of Practice Under the Perishable Agricultural Commodities Act.* Procedures followed in handling formal reparation complaints and disciplinary proceedings.

To file complaints, request publications, or obtain information about the Perishable Agricultural Commodities Act, contact any of the following offices of the Regulatory Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture:

Washington, D.C. 20250

**Phone** (202) 737-4118

Local 447-4180

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Subway Terminal Building

417 South Hill Street, Room 900 D

Los Angeles, California 90013

**Phone** (213) 628-7766

Local 688-3194

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U.S. Custom House

610 South Canal Street, Room 1119

Chicago, Illinois 60607

**Phone** (312) 922-0328

Local 353-6220

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Federal Building

26 Federal Plaza, Room 1641

New York, New York 10007

**Phone** (212) 732-3193

Local 264-1118

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Federal Office Building

819 Taylor Street, Room 9C03

Fort Worth, Texas 76102

**Phone** (817) 335-1630

Local 334-2624

All AMS services are available without regard to race, color, national origin, sex, or religion. If you know of any violations of this principle, send details to the Secretary of Agriculture, Washington, D.C. 20250.

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